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12 *Attorneys for Federal Defendants*

13                   UNITED STATES DISTRICT COURT  
14                   SOUTHERN DISTRICT OF CALIFORNIA  
15                   SAN DIEGO DIVISION

16 WHITEWATER DRAW NATURAL  
17 RESOURCE CONSERVATION  
DISTRICT, *et al.*,

18 Plaintiffs,

19 v.

20 KIRSTJEN M. NIELSEN, *et al.*,

21 Federal Defendants.

22 **Case No. 3:16-cv-2583**

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27  
28 **JOINT STATUS REPORT AND**  
**JOINT MOTION FOR ENTRY OF**  
**PROPOSED BRIEFING SCHEDULE**

Hon. H. James Lorenz

1       The undersigned counsel for the parties have conferred and hereby submit the  
2 following Joint Status Report and request that the Court enter the proposed schedule for  
3 resolution of this case.  
4

5       Plaintiffs brought suit challenging the Department of Homeland Security’s  
6 (“DHS”) compliance with the National Environmental Policy Act (“NEPA”), 42 U.S.C.  
7 §§ 4321 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706,  
8 with regard to an array of programs and actions. *See* Am. Compl. (ECF No. 44). On  
9 September 30, 2018, the Court granted Defendants’ motion to dismiss Counts I and II of  
10 Plaintiffs’ Amended Complaint. ECF No. 55.  
11

12       Remaining before the Court are three counts:  
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- 14       1.     Count III – That DHS Categorical Exclusion A3 violated NEPA and the  
15            APA.
- 16       2.     Count IV – That DHS violated NEPA in applying Categorical Exclusion A3  
17            to four regulations.<sup>1</sup>
- 18       3.     Count V –The DHS violated NEPA in its 2014 Programmatic  
19            Environmental Assessment for the “Response to the Influx of  
20            Unaccompanied Alien Children.”

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22       <sup>1</sup> The four regulations are: (1) Adjustments to Limitations on Designated School Official  
23 Assignments and Study by F-2 and M-2 Nonimmigrants, 80 Fed. Reg. 23,680 (Apr. 29,  
24 2015); (2) Improving and Expanding Training Opportunities for F-1 Nonimmigrant  
25 Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 Fed.  
26 Reg. 13,039 (Mar. 11, 2016); (3) Retention of EB-1, EB-2, and EB-3 Immigrant Workers  
27 and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg.  
5,238 (Jan. 17, 2017); and (4) the International Entrepreneur Rule, 82 Fed. Reg.

1       The parties agree that judicial review of these remaining counts is to be conducted  
2 pursuant to the APA based upon the Administrative Records for the challenged actions.<sup>2</sup>  
3       The parties further agree that under the APA the case is appropriately resolved on the  
4 basis of cross-motions for summary judgment without need for trial and ask that the  
5 Court enter the schedule set forth below:

6             1. Defendants shall lodge with Court, and provide to Plaintiffs, the  
7       Administrative Records for the challenged decisions on or before **February 12, 2018.**  
8  
9             2. Plaintiffs shall file any motion to supplement or challenge the contents of the  
10      Administrative Records on or before **March 12, 2019.** If any such motion is filed, that  
11      motion will be briefed and presented in accordance with the local rules. Additionally, the  
12      parties shall submit a revised proposed schedule for summary judgment briefing within  
13      10 calendar days following the resolution of any such motion.  
14

15             3. In the absence of a motion to supplement or challenge the Administrative  
16      Records, Plaintiffs shall file their motion for summary judgment on or before **March 29,**  
17      **2019.**  
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19             4. Defendants shall file a combined response to Plaintiffs' motion and a cross-  
20      motion for summary judgment on or before **April 29, 2019.**  
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22             5. Plaintiff shall file a combined reply in support of their motion for summary  
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26       <sup>2</sup> The parties agree that because this is an action for review on an administrative record, it  
27      is exempt from FED. R. CIV. P. 16(b), and from initial disclosures and FED. R. CIV. P.  
28      26(f), *see* FED. R. CIV. P. 26(a)(1)(B)(i), 26(f)(1).

judgment and in response to Defendants' cross-motion on or before May 13, 2019.

6. Defendants shall file a reply in support of their cross-motion for summary judgment on or before May 27, 2019.

A proposed order is submitted herewith.

Respectfully submitted,

DATED: November 20, 2018

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## **Signature Certification**

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Julie Axelrod, counsel for Plaintiffs, the Waterwater Draw Natural Resources Conservation District, *et al.*, and that I have obtained Ms. Axelrod's authorization to affix her electronic signature to this document.

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